

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

KRISTI CATES, et al.,)	
)	
Plaintiffs)	
)	
v.)	Docket No. 00-CV-143-B-S
)	
PILOT COMMUNICATIONS, LLC,)	
et al.,)	
)	
Defendants)	

**ORDER ON PLAINTIFFS' REQUEST FOR WRIT OF EXECUTION AND
DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT**

SINGAL, District Judge

Before the Court are Plaintiffs' Request for Writ of Execution (Docket #34) and Defendant's Motion for Relief from Judgment (Docket #35). Both motions question whether it was appropriate for Defendant Pilot Communications, LLC (hereinafter "Pilot Communications") to withhold federal and state taxes from part of the judgment awarded to Plaintiffs. For the reasons stated below, the Court GRANTS Plaintiffs' Request for a Writ of Execution against Defendant Pilot Communications and DENIES Defendant's Motion for Relief from Judgment.

I. BACKGROUND

Defendants removed this case to federal court on July 21, 2000. On August 30, 2000, Plaintiffs filed both Defendants' Offer of Judgment, dated August 11, 2000, and

Plaintiffs' acceptance of the Offer, dated August 29, 2000. (See Docket #9.) Because Plaintiffs failed to respond to the Offer of Judgment within the ten-day period allotted under Federal Rule of Civil Procedure 68, Defendants filed a flurry of objections on the grounds that the period of time for acceptance expired prior to August 29, 2000. (See Docket #s 12, 13, 15, 18.)

On September 25, 2000, at a hearing held on the record before Magistrate Judge Kravchuk, the Defendants waived these objections to the timeliness of Plaintiffs' acceptance of the Offer of Judgment. (See Docket #32.) Thereafter, the Magistrate Judge ordered the Clerk to enter judgment in accordance with the exact language of the Offer of Judgment. Pursuant to the Magistrate Judge's order, the Clerk entered Judgment, in relevant part, as follows:

Judgment is hereby entered for Plaintiff Kristi Cates as against Defendant Pilot Communications, LLC in the amount of \$63,540.00, and against Defendants Pilot Communications of Augusta, Inc., James Leven and Kevin Schmersal in the amount of \$1.00 each, all such amounts including prejudgment interest;

Judgment is further entered for Plaintiff Gloria Charczenko as against Defendant Pilot Communications, LLC in the amount of \$73,840.00, and against Defendants Pilot Communications of Augusta, Inc., James Leven and Kevin Schmersal in the amount of \$1.00 each, all such amounts including prejudgment interest;

Judgment is further entered for Plaintiff Michelle English as against Defendant Pilot Communications, LLC in the amount of \$83,430.00, and against Defendants Pilot Communications of Augusta, Inc., James Leven and Kevin Schmersal in the amount of \$1.00 each, all such amounts including prejudgment interest.

(See Judgment (Docket #25).)

All parties agree that Defendants Pilot Communications of Augusta, Inc., James Leven and Kevin Schmersal have paid \$1.00 to each of the Plaintiffs thereby satisfying

that portion of the judgment.¹ However, Defendant Pilot Communications did not pay each Plaintiff the full amount listed in the Judgment. Rather, Pilot Communications withheld the following amounts from each Plaintiff as payroll taxes:

- (1) Kristi Cates: \$ 619.13
- (2) Gloria Charczenko: \$ 5,244.60
- (3) Michelle English: \$ 10,027.02

Pilot Communications calculated these withholdings based on the amount of each award that they designated as back pay.

By providing the Court with various correspondence between the parties leading up to the Offer of Judgment, Defendant now asserts that the judgment offered to each Plaintiff consisted of three different types of compensation: compensatory damages, civil penal damages and back pay. Specifically, Defense counsel offers a cover letter it sent to Plaintiffs' counsel along with the Offer of Judgment. In the letter, Defense counsel explains

A brief word about how the figures contained in the Offer of Judgment were calculated may be helpful. Defendants are prepared to pay each plaintiff \$50,000 in compensatory damages, full back pay as calculated by each plaintiff (\$1,901 for Cates, \$11,123 for Charczenko, and \$19,710 for English), \$5000 in civil penal damages and pre-judgment interest on these amounts from January 11, 1999 to August 11, 2000, at the rate of 7.375 percent.

(Def. Ex. A (attached to Def. Mot. for Relief from Judgment (Docket #35)).) In paying the Judgment, Pilot Communications apparently concluded that the amount of each award

¹ Defendants Schmerral and Leven filed objections to Plaintiffs Request for Writ of Execution against them explaining that they paid their portion of the judgment in full. (See Defendant Schmerral's Obj. to Request for Execution on Judgment (Docket #36) (copies of the respective \$1.00 checks sent to each of the Plaintiffs are attached as Exhibit A).) Additionally, Defendants Schmerral and Leven each seek attorney fees for having to file their respective objections. In Plaintiffs' Response to Defendant's Objections (Docket #s 38 & 39), Plaintiffs withdraw their request for a Writ of Execution against Defendants Schmerral and Leven, and adequately explain the reason for any delay in requesting such a withdrawal. Therefore, the Court hereby DENIES Defendants Schmerral and Leven's Motions for Attorney Fees (Docket #s 36 & 37).

designated as back pay constituted wages from which it was required to withhold certain state and federal taxes and remit the withheld amounts to the taxing authorities. (See Def. Mot. for Relief from Judgment at 2-6 (Docket #35).)

II. DISCUSSION

Rule 68 allows a defendant to make an offer of judgment to a plaintiff. Upon receipt, a plaintiff has ten days to decide whether to “take it or leave it.” See Fed. R. Civ. P. 68. If a plaintiff accepts the defendant’s offer of judgment, judgment is entered against defendant as specified in the offer with no modification. If a plaintiff does not accept defendant’s offer of judgment, that plaintiff runs the risk of having to pay the defendant’s post-offer costs if plaintiff’s ultimate recovery is less than the offer of judgment.

“As a general matter, it is agreed that since Rule 68 offers are basically offers of settlement their provisions should be interpreted according to contract law principles.” Wright, Miller & Marcus, *Federal Practice & Procedure: Civil 2d* § 3002 at p. 94 (1997). Because a defendant is the drafter of an offer of judgment, contract principles dictate that ambiguous language in an offer of judgment is construed against the defendant who drafted it. See Chambers v. Manning, 169 F.R.D. 5, 8 (D. Conn. 1996) (“[A] defendant should state his intentions clearly, and any failure to do so will be at his peril.”).

Applying these principles to this case, Defendants’ Offer of Judgment and the Judgment entered pursuant to the Offer do not designate what amount, if any, represents back pay. Nonetheless, Defendants now submit extrinsic evidence from which the Court is supposed to determine that a portion of the judgment represents back pay subject to withholding. Looking at the Complaint, the Court finds that Plaintiffs sought

compensatory damages for emotional distress and mental anguish as well as back pay, front pay and punitive damages. (See Compl. (Docket #1).) Defendants were entitled to make an offer of judgment based on any or all of these theories of damages. However, without an explicit designation in the Offer of Judgment, it is not clear that the parties agreed that any portion of the Judgment constituted back pay and the Court will not look beyond the language of the parties' agreement to make such a determination. Therefore, the Court declines to designate a portion of the judgment as back pay by looking to extrinsic evidence.² See, e.g., Ramos v. Davis & Geck, Inc., 224 F.3d 30, 33 (1st Cir. 2000) (concluding it was clearly erroneous for the district court to designate a portion of a jury award as back pay for withholding purposes when jury had not explicitly designated a portion of its award as back pay).

III. CONCLUSION

For this reason, the Court hereby DENIES Defendant's Motion for Relief from Judgment (Docket #35) and GRANTS Plaintiffs' Request for a Writ of Execution (Docket #34) against Defendant Pilot Communications. The Clerk shall issue a writ of execution directing Defendant to satisfy the Judgment by paying as follows: \$619.13 to Plaintiff Kristi Cates; \$5,244.60 to Plaintiff Gloria Charczenko; and \$10,027.02 to Plaintiff Michelle English. Defendant shall also pay post-judgment interest on these outstanding amounts.

² In reaching this conclusion, the Court expresses no opinion on the issue of what taxes Plaintiffs may or may not owe on their individual awards. Similarly, the Court expresses no opinion on whether Pilot Communications is liable for any taxes based on the award. These issues are not properly before the Court and are best addressed in other forums after the Judgment is satisfied.

SO ORDERED.

George Z. Singal
United States District Judge

Dated on this 16th day of February 2001.

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TRACIE L. ADAMSON, ESQ.
(See above)
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GLORIA CHARCZENKO	SUMNER H. LIPMAN
plaintiff	(See above)
	[COR]

TRACIE L. ADAMSON, ESQ.

(See above)

[COR LD NTC]

v.

PILOT COMM LLC

defendant

MARY DELANO, ESQ.

[COR LD NTC]

BURNS, RAY, DELANO & MACDONALD,
P.A.